UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07-12075-RGS

LOUIS J. FARRAH, II, as administrator
of the estate of Alfonso Santana

v.

STEPHEN R. GONDELLA, MARK F. BLANCHARD,
MARK RIVET, WILLIAM C. CANTY, GREGORY DERN,
MARK F. DELANEY, and JONATHAN BLODGETT

MEMORANDUM AND ORDER ON
MOTION TO DISMISS AMENDED COMPLAINT
BY JONATHAN BLODGETT

July 16, 2008

STEARNS, D.J.

This case arises out of the death of Alfonso Santana during an altercation with officers of the City of Lawrence and the Massachusetts State Police. Plaintiff Louis J. Farrah, as the administrator of Santana's estate, brings this action against the officers and Jonathan Blodgett, the Essex District Attorney. The Amended Complaint alleges that the officers unlawfully assaulted and killed Santana while attempting to arrest him on October 19, 2005. In lieu of an answer, District Attorney Blodgett seeks to dismiss the Amended Complaint. Blodgett contends that the Amended Complaint pleads insufficient facts concerning: (1) his role, if any, in supervising the officers involved in Santana's arrest; and (2) any notice he might have received of prior acts of constitutional misconduct on their part.

FACTS ALLEGED IN THE AMENDED COMPLAINT

Santana died in Lawrence on October 19, 2005, as a result of a beating by "one or more" of defendants Gondella, Blanchard, Dern, Rivet, and possibly unknown others (the "Acting Officer Defendants"). See Am. Compl. ¶¶ 1, 5, 17. Santana had just parked his car in front of his home when he was seized without probable cause or a warrant and accused of possessing cocaine by the Acting Officer Defendants. See id. ¶ 16. Santana was unarmed and had no cocaine on his person when the Acting Officer Defendants kicked, punched, and physically restrained him. See id. ¶¶ 17-18.

District Attorney Blodgett is named in his supervisory capacity as the "overseer" of the Drug Task Force to which the Acting Officer Defendants belonged. See id. ¶ 4. The Amended Complaint alleges that Blodgett, along with defendants Canty, Dern, Delaney, and possibly others, failed to adequately supervise, train, and discipline the Acting Officer Defendants in general and defendant Blanchard in particular. See id. ¶¶ 22-28. Specifically, "Blodgett knew or should have known that prior to the seizure, beating and killing of Santana, Blanchard had used unnecessary force in making arrests, and had made statements that showed he harbored a significant dislike of Hispanics." Id. ¶ 23.

Prior to Santana's death, "Blanchard had used excessive and unnecessary force while making arrests on a number of occasions in the presence of other police officers. Blanchard was known among other police officers as an officer with a propensity to employ a excessive force. . . . Blodgett knew, or in the proper exercise of [his] supervisor responsibilities should have known, of the propensity of Blodgett to employ excessive force." Id. ¶ 24. "On or about January 23, 2004, defendants Blanchard, Gondella, Canty

and Rivet were members of the Cross Border Task Force[1] and present during the arrest of Walter Norton, at which time one or more of the said officers punched, kicked in the face, stomped on the head and beat the body of Walter Norton. . . . Blodgett knew, or in the proper exercise of [his] supervisor responsibilities should have known, of this incident." Id. ¶ 25. In addition, Blanchard had previously made "statements in the presence of other police officers that showed he had a significant dislike for persons of Hispanic background and Blanchard was known among other police officers as an officer with prejudices against Hispanics. . . . Blodgett knew, or in the proper exercise of [his] supervisor responsibilities should have known, of the prejudices of Blodgett against Hispanics." Id. ¶ 26. "Despite the fact that . . . Blodgett knew or should have known of the tendency of Blanchard to use excessive force, and of his prejudice against Hispanics, [he] took no action to supervise, train, reassign or discipline the defendant Blanchard." Id. ¶ 27. That failure permitted "Blanchard to engage in further acts of misconduct and was a significant and proximate cause of Blanchard's participation in the seizure, beating and killing of Santana." Id. ¶ 28.

Plaintiff originally filed this action on October 31, 2007. On January 30, 2008, plaintiff filed an Amended Complaint. The Amended Complaint asserts four claims against District Attorney Blodgett: (1) a claim under 42 U.S.C. § 1983, for the use of excessive force (Count I); (2) an attendant survival claim[2] for the § 1983 claim (Count II); (3) a tort

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[1]The Amended Complaint does not explain the composition or mission of the Cross Border Task Force (CBTF).

[2]Count II is superfluous and will be dismissed. State law determines the survivorship of a § 1983 action. See Robertson v. Wegmann, 436 U.S. 584 (1978). Plaintiff Farrah has standing to bring Santana's cause of action in his capacity as the administrator of Santana's estate. See Mass. Gen. Laws ch. 228. There is no

claim for assault and battery (Count III); and (4) an attendant survival claim for assault and battery (Count IV).

DISCUSSION

To survive a motion to dismiss, a complaint must state "a plausible entitlement to relief." Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1967 (2007), overruling Conley v. Gibson, 355 U.S. 41 (1957). See also Morales-Tañon v. Puerto Rico Elec. Power Auth., 524 F.3d 15, 18 (1st Cir. 2008); Rodríguez-Oritz v. Margo Caribe, Inc., 490 F.3d 92, 95-96 (1st Cir. 2007). Dismissal is appropriate if the complaint does not allege "enough factual matter (taken as true)" to support the elements of the claim. Twombly, 127 S.Ct. at 1965 (explaining that "entitlement to relief" requires more than labels and conclusions and a formulaic recitation of the elements of a cause of action). "Specific facts are not necessary; the statement need only give the defendant fair notice of what the claim is and the grounds upon which it rests." Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007), citing Twombly, 127 S.Ct. at 1964 (internal quotation omitted). Otherwise stated, the complaint must identify the "circumstances, occurrences, and events" that underlie the plaintiff's claim. Twombly, 127 S.Ct. at 1965, quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1202, at 94-95 (3d ed. 2004).

Supervisory Liability under § 1983 (Counts I and II)

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independent consortium claim. See Soto v. Flores, 103 F.3d 1056, 1062 (1st Cir. 1997). See also Robles-Vazquez v. Garcia, 110 F.3d 204, 206, n.4 (1st Cir. 1997) ("First Circuit case law holds that surviving family members cannot recover in an action brought under § 1983 for deprivation of rights secured by the federal constitution for their own damages for the victim's death unless the unconstitutional action was aimed at the family relationship.").

A superior officer cannot be held vicariously liable under section 1983 on a theory of *respondeat superior*; rather, he may be found liable only on the basis of his own acts or omissions. See Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994). The claim requires proof of three elements: (1) that the subordinate's actions were unconstitutional; (2) that the supervisor had notice of such conduct; and (3) that the supervisor's actions (or failure to act) can be affirmatively linked to the unconstitutional conduct at issue. See Camilo-Robles v. Hoyos, 151 F.3d 1, 6-7 (1st Cir. 1998).

Notice does not require a showing of actual knowledge of the offending behavior on the part of the supervisor; rather, he "may be liable for the foreseeable consequences of such conduct if he would have known of it but for his deliberate indifference or willful blindness." Camilo-Robles, 151 F.3d at 7; see also Febus-Rodriguez v. Betancourt-Lebron, 14 F.3d 87, 92 (1st Cir. 1994) (same, claims of lack of proper police training – five unrelated prior disciplinary infractions insufficient to place municipality on notice).

There must also be an "affirmative link" between the supervisor's acts or omissions and his subordinate's violation of a plaintiff's constitutional rights. See Lipsett v. Univ. of Puerto Rico, 864 F.2d 881, 902 (1st Cir. 1988). See also Maldonado-Denis, 23 F.3d at 582 ("Deliberate indifference . . . is not the be-all and end-all of a section 1983 claim premised on supervisory liability. . . . [T]here is a causation element as well."). "This causation requirement can be satisfied . . . if the supervisor knew of, overtly or tacitly approved of, or purposely disregarded the conduct." Id. "A causal link may also be forged if there exists a known history of widespread abuse sufficient to alert a supervisor to

ongoing violations. When the supervisor is on notice and fails to take corrective action, say, by better training or closer oversight, liability may attach." Id.

Here, plaintiff alleges that four of the officers involved in the Santana arrest and death were involved in the beating of another individual, Walter Norton, some two years earlier. Plaintiff alleges that Blanchard had been previously involved in multiple instances of excessive force,[3] that he disliked Hispanics,[4] and that he had a reputation among other unnamed police officers for a propensity to use excessive force against Hispanics. Therefore, according to plaintiff, Blodgett as the ultimate supervisor of the Task Force, knew or should have known of the risk posed by Blanchard and taken steps to protect Santana and the public at large.

In Blodgett's view, the supervisory claim is pled so broadly that it would allow civil rights plaintiffs to sweep any superior officer into the ambit of liability simply by using catch-phrases like "knew or should have known" and "failed to act." Blodgett contends that plaintiff is attempting to bootstrap allegations regarding Blanchard's past conduct into the claim of supervisory liability without pleading any link between the alleged conduct and Blodgett personally. According to Blodgett, Twombly requires more. Blodgett may in this regard place too much weight on Twombly, but there is another consideration.

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[3]Although the Amended Complaint makes reference to the use of excessive force on a "number of occasions," only the Norton incident is pled. That incident references the CBTF, of which Blanchard and three other defendants were members. Blodgett, however, is not alleged to have had any relationship to or supervisory authority over the CBTF.

[4]The relevance of this allegation is not clear as the Amended Complaint contains no information regarding Santana's ethnicity or any factual allegation that ethnic considerations played a role in the decision of the Acting Officer Defendants to arrest Santana.

Rule 8 requires a civil rights plaintiff (as it does plaintiffs generally) to set forth factual allegations with respect to each material element necessary to warrant relief, including "who did what to whom, when, where, and why." Educadores Puertorriqueños en Accíon v. Hernández, 367 F.3d 61, 68 (1st Cir. 2004) (affirming the application of Rule 8 to civil rights actions, but rejecting a "heightened pleading standard").

> [I]n considering motions to dismiss courts should continue to "eschew any reliance on bald assertions, unsupportable conclusions, and opprobrious epithets." Chongris v. Bd. of Appeals, 811 F.2d 36, 37 (1st Cir. 1987) (citation and internal quotation marks omitted). Such eschewal is merely an application of Rule 8(a)(2), not a heightened pleading standard uniquely applicable to civil rights claims. See Correa-Martinez, 903 F.2d at 52-53 (treating the general no-bald-assertions standard and the heightened pleading standard for civil rights cases as two separate requirements); see also Higgs, 286 F.3d at 439 (rejecting the idea of "special pleading rules for prisoner civil rights cases," but nonetheless requiring complaints to meet some measure of specificity). As such, we have applied this language equally in all types of cases. See, e.g., Arruda v. Sears, Roebuck & Co., 310 F.3d 13, 18 (1st Cir. 2002) (holding plaintiff to this standard in a bankruptcy action); LaChapelle, 142 F.3d at 508 (holding plaintiff to this standard in an action alleging breach of contract and intentional infliction of emotional distress).

Id.

Plaintiff's supervisory claim against Blodgett, as currently pled, skirts perilously close to an unadorned theory of vicarious liability, a tort concept that has no application in a section 1983 context. See City of Canton v. Harris, 489 U.S. 378, 385 (1989). The Amended Complaint contains no facts explicating the role that Blodgett had in: (1) overseeing the training, assignment or discipline of any of the Acting Officer Defendants; or (2) formulating or enforcing Drug Task Force policies, practices, or protocols; or (3) investigating allegations of misconduct against Drug Task Force officers. Moreover,

plaintiff does not allege that Blodgett had the authority to impose discipline on members of the Drug Task Force (as opposed to the Chiefs of Police or the Colonel of State Police by whom they were employed).[5] While a civil rights plaintiff need not plead encyclopedic facts in order to adequately state a supervisory liability claim, the facts pled should be sufficient to cross the rim of the speculative into the realm of the plausible. This is particularly true where the supervisor against whom the claim is brought is an elected official whose duties run well beyond oversight of one of many components of a government office owing manifold duties to the general public. Perhaps the court is mistaken in permitting plaintiff a second chance as against Blodgett, but at this stage of the proceedings, the rules are appropriately plaintiff-friendly, and Blodgett has not (as yet) raised a claim of qualified immunity. The court will permit plaintiff to conduct discovery from Blodgett limited solely (and strictly) to the issues of: (1) his authority to discipline members of the Drug Task Force for alleged misconduct; and (2) his knowledge of any propensity by Blanchard (or others) to use excessive force. All such discovery shall be completed within sixty (60) days of the date of this Order.[6]

ORDER

[5]There is a conclusory allegation that Blodgett "supervised" the officers who belonged to the Drug Task Force.

[6]On the notice issue, the parties might compare Febus-Rodriguez, 14 F.3d at 93 (no notice where subordinate police officer was the subject of five unrelated complaints), with Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 562-564 (1st Cir. 1989) (supervisor recklessly indifferent where he had knowledge of thirteen different citizen complaints about prior similar incidents of brutal behavior).

For the foregoing reasons, Blodgett's motion to dismiss is DENIED without prejudice.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE